

INTRODUCTION

COURT STRUCTURE AND PROCEDURES

A. Physical Facilities

The headquarters of the court are located at 95 Seventh Street, San Francisco, California. The mailing address is P.O. Box 193939, San Francisco, California 94119-3939, and the telephone number is (415) 556-9800. There are divisional clerks' offices in Pasadena, Seattle and Portland. The court has courthouses in Pasadena and Portland.

B. Emergency Telephone Number

The clerk's office provides 24-hour telephone service for calls placed to the main clerk's office number, (415) 556-9800. Messages left at times other than regular office hours are recorded and monitored on a regular basis by staff attorneys.

The emergency telephone service is to be used only for matters of extreme urgency that must be handled by the court before the next business day. Callers should make clear the nature of the emergency and the reason why next-business-day treatment is not sufficient.

C. Judges and Supporting Personnel

(1) **Judges** -- The court has an authorized complement of 28 authorized judgeships. Upon the attainment of senior status, a judge may continue, within statutory limitations, to function as a member of the court. There are several senior circuit judges who regularly hear cases before the court.

Although San Francisco is the court's headquarters, most of the active and senior judges maintain their residence chambers in other cities within the circuit. The residences and chambers of the court's judges, including its senior judges, are indicated in the listing following the title page.

The court has established three regional administrative units to assist the chief judge of the circuit to discharge her administrative responsibilities. They are the **Northern**, **Middle** and **Southern** units. The senior active judge in each unit is designated the administrative judge of the unit.

- The **Northern Unit** includes the districts of Alaska, Idaho, Montana, Oregon, and Eastern and Western Washington.
- The **Middle Unit** includes the districts of Arizona, Nevada, Hawaii, Guam, Northern and Eastern California, and the Northern Mariana Islands.
- The **Southern Unit** includes the districts of Central and Southern California.

Cases arising from the Northern Unit will normally be calendared in Seattle or Portland, from the Middle Unit in San Francisco, and from the Southern Unit in Pasadena. Cases may also be heard in such other places as the court may designate.

(2) **Appellate Commissioner** -- the Appellate Commissioner is an officer appointed by the court to rule on or review and make recommendations on a variety of non-dispositive matters, such as applications by appointed counsel for compensation under the Criminal Justice Act and certain motions specified in these rules and elsewhere, and to serve as a special master as directed by the court.

(3) **Clerk's Office** -- The Clerk's Office is headed by the Clerk and several supervising deputies. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday. In addition to the San Francisco office, the court has permanent, but not full service, clerk's offices in Seattle, Pasadena, and Portland. Docket information may be obtained from these offices. Court information, including court rules, the general orders, calendars and opinions are available on the Court's web page at **www.ca9.uscourts.gov**.

Clerk's office personnel are authorized by Circuit Rule 27-7 to act on certain procedural motions (see Note 27-7, infra); are authorized by Federal Rule of Appellate Procedure (FRAP) 42(b) to handle stipulations for dismissal; and are authorized to dismiss cases for non-prosecution.

Inquiries concerning rules and procedures may be directed to the San Francisco, Pasadena, Seattle, or Portland clerk's office. On matters requiring special handling, counsel may contact the clerk for information and assistance. It should be emphasized, however, that legal advice will not be given by a judge or any member of the court staff.

(4) **Office of Staff Attorneys** -- This office consists of the staff director, staff attorneys and case management attorneys who work for the entire court rather than for individual judges. The staff attorneys are assigned to the motions units. Permanent members of the court staff are case management attorneys and other attorneys assisting in the administration of the office. The staff attorneys perform a variety of tasks for the court:

(a) **Inventory** -- After appellate briefing has been completed, the case management attorneys review the excerpt of record and briefs in each case in order to identify jurisdictional defects and the primary issues raised in the appeal and to assign a numerical point designation to the case reflecting the relative amount of judge time that likely will have to be spent on the matter. Cases suffering from clear jurisdictional defects are processed through a motions panel as soon as the defects are noted.

(b) **Research** -- Under the supervision of the staff director and supervising attorneys, the court law clerks review briefs and records, research legal issues, and prepare memorandum dispositions for oral presentation to three-judge panels, principally in cases in which no oral argument is calendared.

(c) **Motions** -- Certain staff attorneys specialize in motions work. Except for procedural motions disposed of by the clerk, the motions attorneys process all motions filed in a case prior to assignment of a particular panel for disposition on the merits. Motions attorneys present all motions to three-judge panels or the Appellate Commissioner.

The motions attorneys also process emergency motions filed pursuant to Circuit Rules 27-3 and 27-4, and motions for reconsideration for the motions panels that initially decided the particular motions matter, and all requests for initial hearing en banc.

(5) **Circuit Court Mediators** - Shortly after the appeal is filed, the circuit court mediators will review the civil appeals docketing statement to determine if a case appears suitable for the court's settlement program. The Circuit Court Mediators are permanent members of the court staff. They are experienced appellate practitioners who have had extensive mediation and negotiation training.

(6) **Library** -- The staff of the Ninth Circuit library system serve circuit, district, bankruptcy and magistrate judges, as well as staff of other court units. Services provided include reference and other information services, acquisition of publications for court libraries and judges' chambers, organization and maintenance of library collections and management of the Circuit library system. The Ninth Circuit library system, headed by the Circuit Librarian, consists of 21 staffed libraries including the headquarters library and 20 branch libraries located throughout the Circuit. The administrative office and the headquarters library are located in San Francisco.

Court libraries may make their collections available to members of the bar and the general public depending on local court rules. Hours for the headquarters library in San Francisco are Monday through Friday, 1:00 p.m. to 5:00 p.m. and 8:00 a.m. to 5:00 p.m. during court week. Information regarding the location and hours of operation for other branch libraries may be obtained by calling the headquarters library reference desk at (415) 556-9500.

(7) **Circuit Executive's Office** -- The Circuit Executive's office is the arm of the circuit's Judicial Council that provides administrative support to appellate, district and bankruptcy judges in the circuit. The office is staffed by the Circuit Executive, assistants and secretaries.

D. The Judicial Council

The Judicial Council, established pursuant to 28 U.S.C. § 332, is currently composed of the Chief Judge, four circuit judges, and four district judges. The Council convenes regularly to consider and take required action upon any matter affecting the administration of its own work and that of all federal courts within the circuit, including the consideration of some complaints of judicial misconduct.

E. Court Procedures for Processing and Hearing of Cases

(1) **Classification of Cases** -- After appellees' briefs are filed, the cases are classified by type, issue, and difficulty. The weight of a case is merely an indication of the relative amount of judicial time that will probably be consumed in disposing of the appeal. The inventory process enables the court to balance judges' workloads and hear at a single sitting unrelated appeals involving similar legal issues.

(2) **Designation of Court Calendars** -- Under the direction of the Court, the clerk of the court sets the time and place of court calendars, taking into account, for at least six months in advance, the availability of judges, the number of cases to be calendared, and the places of hearing required or contemplated by statute or policy. The random assignment of judges by computer to particular days or weeks on the calendars is intended to equalize the workload among the judges. At the time of assigning judges to panels, the clerk does not know which cases ultimately will be allocated to each of the panels.

(3) **Disclosure of Judges on Panels** -- The names of the judges on each panel are released to the general public on the Monday of the week preceding argument. At that time, the calendar of cases scheduled for hearing is posted in the San Francisco, Pasadena, Seattle, and Portland offices of the clerk of the court and is forwarded for posting to the clerks of the district courts within the circuit. This provision permits the parties to prepare for oral argument before particular judges. Once the calendar is made public, motions for continuances will rarely be granted.

(4) **Allocation of Cases to Calendars** -- Direct criminal appeals receive preference pursuant to FRAP 45(b) and are placed on the first available calendar after briefing is completed. Many other cases are accorded priority by statute or rule (see, Circuit Rule 34-3). Their place on the court's calendar is a function of both the statutory priority and the length of time the appeals have been pending. Pursuant to FRAP 2, the court also may in its discretion order that any individual case receive expedited treatment.

The court makes every effort to ensure that calendars are prepared objectively and that no appeal is given unwarranted preference. The only exception to the rule of random assignment of cases to panels is that a case heard by the court on a prior appeal may be set before the same panel upon a later appeal. If the panel that originally heard the matter does not specify its intent to retain jurisdiction over any further appeal, the parties may file a motion to have the case heard by the original panel. Matters on remand from the United States Supreme Court are referred to the panel that previously heard the matter.

Normally, court calendars are held each year in the following places:

- ▶ 12 in San Francisco (usually the second week of each month),
- ▶ 12 in Pasadena (usually the first week of each month),
- ▶ 12 in Seattle (usually the first week of each month),
- ▶ 6 in Portland,
- ▶ 2 in Honolulu, and
- ▶ 1 in Anchorage.

Each court calendar usually consists of one week of multiple sittings.

(5) Selection of Panels -- The Clerk of Court sets the time and place of the calendars. The Clerk utilizes a matrix composed of all active judges and those senior judges who have indicated their availability. The aim is to enable each active judge to sit with every other active and senior judge approximately the same number of times over a two-year period and to assign active judges an equal number of times to each of the locations at which the court holds hearings.

At present, all panels are composed of no fewer than two members of the court, at least one of whom is an active judge. Every year, each active judge, except the Chief Judge, is expected to hear at least eight monthly calendars of five panel sittings each, exclusive of en banc hearings, motions, three-judge district court cases, and cases for which a judge's name is drawn by lot. Of the four months off calendar, the judge ordinarily spends two months catching up on opinion writing and other court business with which the judge may be involved at the time and serving on a monthly motions panel. Senior judges are given a choice as to how many cases they desire to hear.

The court on occasion calls upon district judges to sit on panels when there are insufficient circuit judges to constitute a panel. It is court policy that district judges not participate in the disposition of appeals from their own districts. In addition, the court attempts to avoid assigning district judges to appeals of cases over which other judges from their district have presided (either on motions or at trial) as visiting judges in other districts.

All active judges and some senior judges serve on a motions panel, whose membership changes monthly. The motions panel meets several times each month in San Francisco, and also consults by telephone conference, to rule on motions. The identity of the motions panel is released on the first day of the month.

(6) **Pre-Argument Preparation** -- After the cases have been allocated to the panels, the briefs and excerpts of record in each appeal are distributed to each of the judges scheduled to hear the case. The documents are usually received in the judges' chambers six weeks prior to the scheduled time for hearing, and it is the policy of the court that each judge read all the briefs prior to oral argument.

(7) **Oral Argument** -- The Clerk sends a master calendar notice to all counsel of record about five weeks prior to the date of oral argument. If counsel finds it impossible to meet the assigned hearing date, a motion for continuance should be made immediately. Delay in submitting such a motion will militate against the court's granting the relief requested. Once the identity of the judges are announced, motions for continuance will rarely be granted.

The Clerk's notice of hearing reminds counsel to inform the court promptly if the case may have become moot, settlement discussions are pending, or relevant precedent has been decided since the briefs were filed. The notice also indicates how much time will be allotted to each side for oral argument. If oral argument is allowed, the amount of time, which is within the court's discretion, generally ranges between 10 and 20 minutes per side. If counsel wishes more time, a motion to that effect must be filed as soon as possible after the notice is received.

Daily court calendars usually commence at 9:00 a.m., Monday through Friday. Counsel are expected to check in with the courtroom deputy at least 30 minutes prior to the start of the calendar. Arguments are digitally recorded for the use of the Court and the recording does not represent an official record of the proceedings. The recording may be accessed the day following argument via the court's website (www.ca9.uscourts.gov). Members of the public may also request a tape recording of the proceedings.

(8) **Case Conferences** -- At the conclusion of each day's argument, the judges on each panel confer on the cases they have heard. Each judge expresses his or her tentative views and votes in reverse order of seniority. The judges reach a tentative decision regarding the disposition of each case and whether it should be in the form of a published opinion. The presiding judge then assigns each case to a judge for the preparation and submission of a disposition.